HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.21164 OF 2005

DATED: 21.2.2006

Between:

Chittimalla Ganesh

… Petitioner

and

Warangal Urban Cooperative Bank

Limited, Warangal, represented by its

Branch Manager

… Respondent

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.21164 OF 2005

ORAL ORDER:

The Writ Petition is filed aggrieved by the order of the Cooperative Tribunal,

Warangal, dated 30.8.2005 in I.A.No.159 of 2004.

The respondent-Bank sanctioned a credit limit of Rs.1,75,000/- towards educational loan in September 1995 to the petitioner for his educational purposes. An amount of Rs.1,25,000/- was released in two instalments by October 1996. The petitioner admittedly defaulted on the payment of instalments. For recovery of the amounts due, the respondent-Bank approached the Registrar of Cooperative Societies for a certificate, under Section 71 of the A.P. Cooperative Societies Act, 1964 (for short 'the Act'). By proceedings dated 31.8.1998, attachment of movable properties was ordered by the Registrar. Aggrieved, the petitioner filed W.P.No.33450 of 1998. The writ petition was dismissed on 2.12.1998 giving the petitioner liberty to avail the appropriate alternative relief under the Act. The petitioner then filed CTA No.186 of 1999 before the Cooperative Tribunal challenging the proceedings of the Sale Officer, initiated in the certificate proceedings Case No.12/98C. The petitioner also obtained an order from the Cooperative Tribunal directing the Sale Officer to postpone the action proposed against the petitioner.

After instituting CTA No.186 of 1999, the petitioner left for United States for employment. He used to attend the Cooperative Tribunal occasionally and whenever he was visiting Hyderabad from the United States. CTA No.186 of 1999 was dismissed for default by the Cooperative Tribunal on 26.8.2002 as there was persistent failure in representation on behalf of the petitioner.

The petitioner then filed an application for restoration of the CTA, along with an application seeking condonation of a delay of 439 days. The condonation of delay was sought in I.A.No.159 of 2004. The Cooperative Tribunal, by the order impugned in this writ petition, rejected the petitioner's application for condonation of delay finding no justification whatsoever for condoning the delay. The Tribunal found that the petitioner's absence from India for employment abroad did not justify

the total non-representation on behalf of the petitioner in his own appeal and that the financial interests of the respondent-Bank are put to jeopardy by the petitioner's laidback conduct in pursuing his appeal-CTA NO. 186/99.

At the admission hearing today, the learned counsel for the petitioner submits that the petitioner is willing to deposit the entire amount due and payable to the respondent as demanded by the respondent-bank to establish his *bona fides* and prays that he be afforded an opportunity to prosecute his appeal in CTA No.186 of 1999 on merits. The learned Standing Counsel for the Bank is agreeable to this course of action, as the Bank's financial interests would be safeguarded.

In the aforesaid circumstances, the writ petition is allowed on condition of the petitioner depositing an amount of Rs.3,77,938/- with the respondent-Cooperative Bank within a period of two weeks from today. On the petitioner depositing the said amount and obtaining a receipt for such deposit from the respondent-Bank, (the respondent-Bank shall forthwith issue such certificate on the petitioner making the deposit), and on the petitioner furnishing the receipt issued by the respondent-Bank evidencing the deposit of the above amount, the Cooperative Tribunal shall proceed to consider the petitioner's application for setting aside the default order dated 26.8.2002 without objecting to its consideration, on the ground of delay in filing the application. On the petitioner depositing the amount above, the order of the Cooperative Tribunal in I.A.No.159 of 2004 dated 30.8.2005 must be deemed to have been set aside and the said I.A. allowed. If the petitioner fails to make the deposit as above and within the time stipulated herein, the writ petition shall stand dismissed. The disposal of the amount deposited by the petitioner to the respondent-Bank shall follow the result of the CTA No.186 of 1999. No costs.

GODA RAGHURAM, J

Date: 21.2.2006

CVM